



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/01599/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12 February 2018

Decision & Reasons

Promulgated

On 14 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR ARSHAD ZEESHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 8 April 1989.
2. He appealed against the respondent's decision to refuse to issue him with a residence card as the alleged extended family member of an EEA national.
3. In a decision promulgated on 21 June 2017, Judge Kelly (the judge) found there was no valid right of appeal and dismissed the appeal for want of jurisdiction.

4. The grounds claimed the judge erred. As **Sala** was in the Court of Appeal there was a request to "*hold the decision*" otherwise it would lead to JR proceedings.
5. Judge Chamberlain granted permission on 28 November 2017. He said that subsequent to the application being made the Court of Appeal held in **Khan [2017] EWCA Civ 1755** that a decision to refuse to issue a residence card to an extended family member was an EEA decision and therefore could be appealed to the First-tier Tribunal in the ordinary way.
6. There was no Rule 24 response.

Submissions on Error of Law

7. Mr Mills asked me to adjourn the hearing pending the appeal of **Khan** which I refused.

Conclusion on Error of Law

8. In light of **Khan**, Judge Chamberlain granted permission to appeal on the basis that it was arguably wrong for the judge to have concluded that he did not have jurisdiction to hear the appeal.
9. The judge through no fault of his own erred in law for the reasons set out in **Khan**. Accordingly, the First-tier Tribunal does have jurisdiction to determine the appeal and therefore the decision to the contrary of the judge is set aside.
10. The appeal be remitted to the First-tier Tribunal to allow a substantive consideration of the appeal.

Notice of Decision

11. The making of the decision of the First-tier Tribunal involved a material error of law. I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing.
12. No anonymity direction is made.

Signed

Date 12 February 2018

Deputy Upper Tribunal Judge Peart